



COURT OF APPEAL FILE NO. CA51535
Trial Lawyers Association of British Columbia v. Attorney General of British Columbia
Intervener Factum

COURT OF APPEAL FOR BRITISH COLUMBIA

ON APPEAL FROM the order of the Honourable Chief Justice Skolrood of
the Supreme Court of British Columbia pronounced on April 29, 2026.

BETWEEN:

Trial Lawyers Association of British Columbia and Kevin Westell

APPELLANTS
(Plaintiffs)

AND:

**Attorney General of British Columbia and
Lieutenant Governor in Council of British Columbia**

RESPONDENTS
(Defendants)

COURT OF APPEAL FILE NO. CA51536
Law Society of British Columbia v. Attorney General of British Columbia
Intervenor Factum

COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

Law Society of British Columbia

APPELLANT
(Plaintiff)

AND:

**Attorney General of British Columbia and
Lieutenant Governor in Council of British Columbia**

RESPONDENTS
(Defendants)

**INTERVENER'S FACTUM
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OPENING STATEMENT

At trial, Chief Justice Skolrood found that throughout history, and particularly since the enactment of the *Charter*, Canadian courts have been called upon to make decisions having direct and significant impacts on the social and economic fabric of the country. These cases only happen because of the diligent and courageous efforts of an independent Bar, comprised of lawyers who advanced novel positions in the face of opposing interests, often represented by the state.¹ Regulatory legislation like Bill 21, like other legislation that may be said to interfere with the independence of the Bar, must be carefully scrutinized, examined through the lens of the impact on lawyers' ability to provide such impartial advice and zealous advocacy.²

But, independence of the Bar, like any other constitutional principle, does not stand alone, nor is it absolute. The unwritten constitution includes principles central to Canada's system of democratic governance; fundamental and organizing principles including federalism, democracy, constitutionalism and the rule of law, and respect for minorities.³ Reconciliation is *also* a fundamental and organizing principle. It is a first principle of Aboriginal law; the grand purpose of s. 35 of the *Constitution Act, 1982*, and it too is an unwritten constitutional principle.⁴

A requirement that the new regulator have regard to "supporting reconciliation" is consistent with a robust, independent Bar. The Indigenous Council created by Bill 21 is too, and it recognizes that throughout Canadian history, European laws and customs were superimposed on pre-existing Indigenous societies, and they became subject to a legal system that they did not share.⁵ It ensures an Indigenous voice in the creation of the rules that will guide the regulator and govern lawyers, including Indigenous lawyers, in British Columbia.

¹ *Law Society of British Columbia v British Columbia (Attorney General)*, 2026 BCSC 779 [Trial Reasons] at paras 98-100.

² Trial Reasons at para 108.

³ Trial Reasons at para 80.

⁴ *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 68; *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 235.

⁵ *Manitoba Metis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14 at para 67.

PART 1 – STATEMENT OF FACTS

A. The relevant provisions of Bill 21

1. The Chief Justice found that the *Legal Professions Act*, S.B.C. 2024, c. 26 (“**Bill 21**”) will significantly alter the regulation of lawyers in British Columbia. For the purpose of the IBA’s factum, the key provisions of Bill 21 are as follows:⁶

- a. **Section 6:** sets out the duties of the new regulator, which include: (a) regulating the practice of law in British Columbia; (b) establishing standards and programs for the education, training, competence, practice and conduct of applicants, trainees, licensees and law firms; and (c) ensuring the independence of licensees. Section 6(2) further directs that the regulator “must exercise its powers and perform its duties under this Act in the public interest”;
- b. **Section 7:** sets out a number of guiding principles that the regulator “must” have regard to in carrying out its functions, including in s. 7(b) “supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples” (“**UNDRIP**”) and in s. 7(c) “identifying, removing or preventing barriers to the practice of law in British Columbia that have a disproportionate impact on Indigenous persons and other persons belonging to groups that are under-represented in the practice of law”.
- c. **Section 26:** provides that before making a rule, the board must consult the Indigenous Council (see below) respecting the extent to which the rule accords with the principles set out in ss. 7(b) and (c).
- d. **Section 29:** establishes the Indigenous Council and sets out the composition of the council. **Section 30** sets out the role of the Indigenous Council, which includes:

⁶ As described by the Chief Justice at para 10 of the Trial Reasons.

- i. Advising and working in collaboration with the regulator on any matter relating to the implementation of UNDRIP in the context of the regulation of the practice of law in British Columbia, including in respect of the incorporation of Indigenous legal traditions and Indigenous practices and the systemic challenges faced by Indigenous persons that require investigation and action by the regulator;
 - ii. Advising on matters that under the Act require consultation with the Indigenous Council;
 - iii. Participating in the regulator's strategic planning processes; and
 - iv. Exercising certain approval powers as conferred by the Act; and,
- e. **Section 224:** establishes a Transitional Indigenous Council which, pursuant to **s. 226**, is required to collaborate with the transitional board of the new regulator to develop the first rules of the new regulator. Under s. 226(2)(b), any such new rules may not be made unless first approved by the Transitional Indigenous Council.

B. The findings of the Chief Justice relevant to the IBA's factum

2. The Chief Justice found that the guiding principles in ss. 7(b) and (c) do not compromise or encroach upon the independence of the Bar, but provide a framework for the new regulator in carrying out its public interest mandate. The Province has an obligation to ensure that its laws are consistent with UNDRIP, and there is an obligation generally on all public institutions to pursue reconciliation. Section 7(b) therefore simply requires the new regulator to operate within the existing legal framework in British Columbia. The Law Society of British Columbia (the "**LSBC**") itself, as the current regulator of lawyers, has already adopted several measures in pursuit of this goal. Section 7(b) must also be read in concert with the regulator's express duty to ensure the independence of licensees, as prescribed by s. 6(1)(c).⁷

⁷ Trial Reasons at paras 175-180.

3. The Chief Justice found that the creation and function of the permanent Indigenous Council does not threaten the independence of the Bar. The Indigenous Council does not have independent rule-making authority, and cannot unilaterally impose rules on the legal professions. Rather, the Indigenous Council has a carefully circumscribed role, with approval power for a specified set of rules relevant to its expertise and a purely advisory role on a broader range of issues.⁸

4. The composition of the Indigenous Council similarly does not threaten independence. Though the Indigenous Council *may* include non-lawyers, there is no reason to dismiss or fear their perspective, let alone conclude that the inclusion of their voices will threaten independence. The LSBC itself has long benefitted from the perspective of lay benchers.⁹

5. The Chief Justice further confirmed that the Transitional Indigenous Council and its approval power over the new regulator's first rules do not undermine independence. The transitional board of the new regulator has a separate duty to ensure the independence of licensees, meaning any rules that the Indigenous Council might consider for approval should not pose any threat to independence in the first place. The Legislature ultimately has the authority to decide upon a regulatory model, and can elect to pursue a model that will advance reconciliation and reduce barriers for Indigenous people in the legal profession.¹⁰

PART 2 – ISSUES ON APPEAL

6. The IBA's submissions are focused on the issues raised by the parties around whether, and to what extent, the inclusion of s. 7(b) and the permanent and transitional Indigenous Councils interfere with the independence of the Bar.

⁸ Trial Reasons at paras 181-184.

⁹ Trial Reasons at para 186.

¹⁰ Trial Reasons at paras 190, 193.

PART 3 – ARGUMENT

A. The importance of including the pursuit of reconciliation as a guiding principle for the new regulator

7. The LSBC argues that the “guiding principles” in s. 7 of Bill 21 interfere with the independence of the Bar by encroaching on self-regulation. In the LSBC’s words, it forces the regulator to “govern the Bar with regard to governing principles chosen by the government, rather than the Bar.”¹¹ The LSBC takes specific issue with the portion of section 7(b) that directs the new regulator to carry out its functions with regard to supporting “the implementation of UNDRIP”. The LSBC argues that the guiding principles direct the Board in its consideration of the law and therefore encroach on self-regulation.¹²

8. The guiding principles in ss. 7(b) and 7(c) of Bill 21 are fundamentally about furthering reconciliation in the context of regulating the legal profession. Requiring the new regulator to have regard to furthering reconciliation in the discharge of its duties does not undermine the independence of the Bar.

9. For most of Canada’s history, lawmakers have wrongly employed a policy of assimilation against Indigenous peoples, the effects of which are still being felt today.¹³

10. As this Court found, relying on the findings of the Truth and Reconciliation Commission of Canada (the “**TRC**”): “[f]or over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada.”¹⁴

11. The continuing impact of Canada’s policies of assimilation are felt across society, including in the legal system. Many Indigenous peoples have a deep and abiding distrust of Canada’s political and legal systems because of the damage they have caused. They

¹¹ LSBC Factum at para 70(b).

¹² LSBC Factum at para 70(b).

¹³ *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 [**Bill C-92 Reference**] at paras 10-11.

¹⁴ *R v Dick*, 2024 BCCA 272 at para 45.

often see Canada's legal system as being an arm of a Canadian governing structure that has been diametrically opposed to their interests.¹⁵

12. As the TRC found: "...[u]ntil recently, Canadian law was used by Canada to suppress truth and deter reconciliation. Parliament's creation of assimilative laws and regulations facilitated the oppression of Aboriginal cultures and enabled the residential school system... In addition, the right of Aboriginal communities and leaders to function in accordance with their own customs, traditions, laws, and cultures was taken away by law. Those who continued to act in accordance with those cultures could be, and were, prosecuted. Aboriginal people came to see law as a tool of government oppression".¹⁶ The law was used as a tool of government oppression against Indigenous people. Notorious examples include the ban on potlaches, and section 141 of the *Indian Act*, which made it an offence to receive or request funds from an Indigenous person for the purposes of prosecuting legal claims.¹⁷

13. The majority in *R. v. Barton*, 2019 SCC 33 pointed out that the SCC has acknowledged on several occasions the detrimental effects of widespread racism against Indigenous people within our criminal justice system.¹⁸ The court found that when it comes to truth and reconciliation from a criminal justice system perspective, much-needed work remains to be done.¹⁹

14. According to the TRC, a commitment to truth and reconciliation demands that Canada's legal system be transformed. Indigenous people need to have greater ownership of, participation in, and access to its central driving forces.²⁰

¹⁵ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: The Truth and Reconciliation Commission of Canada, 2015) [**TRC Summary**] at p 202.

¹⁶ TRC Summary at p 202.

¹⁷ *Indian Act*, 1927 at s 141.

¹⁸ *R v Barton*, 2019 SCC 33 at para 199.

¹⁹ *R v Barton*, 2019 SCC 33 at para 199.

²⁰ TRC Summary, p. 205.

15. When it comes to the regulation of the legal profession, much work remains to be done in pursuit of reconciliation. Indigenous people remain proportionally underrepresented in the legal profession. The LSBC itself has identified that the retention of Indigenous lawyers in the legal profession is a key objective.²¹ The underrepresentation of Indigenous people in the legal profession has a broad impact, on *inter alia*, the development of Aboriginal law, and the ability of the courts to fulfill their obligation to take into account Indigenous legal perspectives and make space for Indigenous legal orders.²² It also affects public confidence and trust in the legal system, especially among Indigenous persons.

16. In “The Duty to Learn”, former Chief Justice Finch makes the point that “...most legal practitioners are neither Aboriginal nor academically trained in the investigation of Aboriginal cultures— [which] has significant implications for the development of Aboriginal law, whether in terms of rights and title recognition, or with regard to the project of incorporating Indigenous legal principles into the common law”.²³

17. The underrepresentation of Indigenous peoples in the legal profession in Canada is also not a new issue. For example, a report commissioned by the LSBC and published in April 2000 estimated that only 100-150 of 8,668 practicing lawyers were Indigenous.²⁴ The report noted that systemic racism was, in general, widespread within the legal profession, and noted the historical relationship of colonialism that lay at the heart of that discrimination.²⁵

²¹ For example, the LSBC reports that only 3% of BC lawyers are Indigenous, while Indigenous people represent 6% of the population in British Columbia:
<https://www.lawsociety.bc.ca/about-us/priorities/truth-and-reconciliation/supporting-indigenous-lawyers>

²² L. Finch, CJ, “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice” (2012) *Continuing Legal Education Society of British Columbia [The Duty to Learn]*

²³ The Duty to Learn at p 2.1.1.

²⁴ Law Society of British Columbia, *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* (April 2000) [**LSBC Report on Barriers**] at p 4.

²⁵ LSBC Report on Barriers at p 4.

18. As the Chief Justice found in this case, there is an obligation generally on all public institutions in Canada to pursue reconciliation.²⁶ Public institutions across Canada, including the courts, have begun to examine their respective roles in furthering reconciliation.²⁷ For example, this Court has developed a reconciliation framework,²⁸ recognizing the reality that we are collectively responsible for the ongoing process of reconciliation.

19. Both Canada and British Columbia have made a commitment to recognize and implement UNDRIP, which also furthers reconciliation. In *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430, this Court refused to accept characterizations of UNDRIP as a “mere ‘non-binding international instrument’” (para. 144). Rather, the *Declaration Act*, s. 2(a) “state[s] positively that *UNDRIP* is to be used by bringing it to bear on British Columbia laws” and “incorporates (i.e., integrates) *UNDRIP* in its entirety into British Columbia positive law”.²⁹

20. A requirement to further reconciliation in the context of regulating the legal profession is not a governing principle “chosen by government” that interferes with the independence of the Bar. It is a recognition that the legal system, and all participants within it, are collectively responsible for doing their part to further the ongoing process of reconciliation. Such a guiding principle *strengthens* the independence of the Bar by enshrining in the regulatory framework a set of guiding principles that are shielded from political interference and the temptation of the government of the day to dictate policy to the regulator based on “divisive public debate”.³⁰

²⁶ Trial Reasons at para 17.

²⁷ The LSBC has also developed and approved a reconciliation framework, which sets out guiding principles for the LSBC’s application of its governing legislation, rules, and Code of Conduct. See Law Society of British Columbia, *Indigenous Framework Report* (September 2022).

²⁸ BC Court of Appeal, *British Columbia Court of Appeal Reconciliation Framework: A Commitment to Advancing Truth and Reconciliation*.

²⁹ *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para 143.

³⁰ LSBC Factum at para 70(b), in reference to the implementation of UNDRIP generally.

B. The Indigenous Councils also further reconciliation

21. Like the guiding principles in s. 7 of Bill 21, the creation of the Indigenous Council also furthers reconciliation, and does not interfere with the independence of the Bar.

22. The Trial Lawyers Association of British Columbia and Kevin Westell argue that the Indigenous Council constitutes an “outside force” exerting control and undue influence over the regulator.³¹ Likewise, the LSBC argues that the Indigenous Council is part of a new regulatory framework that gives control over the role and conduct of lawyers to “outside parties”.³² It describes the Indigenous Council as an entity “external to the Bar”.³³ Both appellants assert that the lack of a statutory requirement in Bill 21 that members of the Indigenous Council also be lawyers, means that the Indigenous Council interferes with Independence of the Bar.

23. First, as found by the Chief Justice, although the Indigenous Council has an important role in the new regulator, it is a carefully circumscribed role.³⁴ The Indigenous Council only has approval power in respect to rules governing the use of alternative resolution processes in discipline and competence matters *that reflect or are influenced by Indigenous practices*; and, rules that are designed *to meet the specific needs of Indigenous persons* who are parties to, or witnesses in, a proceeding before the tribunal.³⁵

24. As the Chief Justice pointed out, the Indigenous Council plays a largely advisory and collaborative role with the board of the new regulator on a range of issues “many of which clearly benefit from the structural inclusion of Indigenous perspectives”.³⁶

25. The Indigenous Council is to advise and work in collaboration with the board on a range of issues, many of which clearly benefit from the structural inclusion of Indigenous perspectives, including the systemic challenges faced by Indigenous persons that require

³¹ TLABC Factum at para 47.

³² LSBC Factum at para 70.

³³ LSBC Factum at para 70(c).

³⁴ Trial Reasons at para 182.

³⁵ Trial Reasons at para 182.

³⁶ Trial Reasons at para 183.

investigation and action by the regulator, and the incorporation of Indigenous legal traditions and practices into the practices and procedures of the regulator.

26. Although the Transitional Indigenous Council has the power to *approve* the first set of rules for the new regulator, it does not have rule-making power. Under s. 224(2) of Bill 21, the role of the Transitional Indigenous Council is the same as the role of the Indigenous Council set out in s. 30 of Bill 21, but in the context of the transition to the new regulatory framework.

27. The characterization of the Indigenous Council as an “external force” or an “outside party” should be rejected. Rather, it represents the structural inclusion of an Indigenous perspective with respect to the operations of the new regulator, especially the creation of rules that reflect or are influenced by Indigenous practices and are designed to meet the specific needs of Indigenous persons. Further, these arguments overlook the role of the Indigenous Council in respect to advising and consulting on the incorporation of Indigenous legal traditions and practices in the operations of the new regulator.³⁷

28. The suggestion that only lawyers ought to be permitted to advise and consult on the incorporation of Indigenous legal traditions and practices of the new regulator is misguided. First, it is not accurate to say that only lawyers qualified in the “Canadian legal system” could be qualified to advise and consult on Indigenous legal traditions. This is clearly not the case. Second, the appellants’ argument fails to take into consideration the fact that Canada has a multi-juridical tradition, and Indigenous perspectives and legal orders operate alongside the Canadian common law.³⁸ The metaphor of “braiding together”³⁹ is an apt description for the process envisioned by Bill 21, of incorporating Indigenous legal traditions and practices into the practices of the new regulator.

29. Like the inclusion of reconciliation and the implementation of UNDRIP as guiding principles, the inclusion of Indigenous perspectives into the regulatory scheme does not interfere with the independence of the Bar. Rather, it strengthens the independence of

³⁷ Bill 21 at s 30(a)(i).

³⁸ *R v Chief Dsta’hyl*, 2026 BCCA 176.

³⁹ *Bill C-92 Reference* at para 7.

the Bar by including Indigenous perspectives in the regulation of the legal profession, furthering the pursuit of reconciliation. Ultimately the Indigenous Council helps facilitate the TRC's call to ensure Indigenous people have greater ownership of, participation in, and access to, the legal profession in British Columbia, it furthers the implementation of UNDRIP, and the Indigenous Council reflects the reality of legal pluralism in Canada.

C. Conclusion

30. Reconciliation is a long-term project that will not be accomplished in a single sacred moment, but rather through a continuous transformation of relationships and, as noted by the SCC, a braiding together of distinct legal traditions and sources of power that exist.⁴⁰

31. The guiding principles in s. 7 and the creation of the transitional and permanent Indigenous Councils are measures that further reconciliation, remove or prevent barriers to the practice of law for Indigenous people, and facilitate the inclusion of Indigenous perspectives, legal orders, and practices in the regulation of lawyers. These measures do not threaten the independence of the Bar, they strengthen it.

PART 4 – NATURE OF ORDER SOUGHT

32. The IBA takes no position on the orders sought by the appellants. It seeks no costs and asks that no costs be awarded against it.

All of which is respectfully submitted.

Dated at the City of Victoria, Province of British Columbia, this 5th day of October, 2026.



**Declan C. Redman, David W. Wu, and
Rachel McMillan**
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⁴⁰ *Bill C-92 Reference* at para 90.

APPENDICES: LIST OF AUTHORITIES

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CASES		
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Law Society of British Columbia, Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers	6, 7, 9	17, 18
Law Society of British Columbia, <i>Indigenous Framework Report</i> (September 2022)	7	18
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<i>The Duty to Learn</i> , by The Honourable Chief Justice Lance S.G. Finch	6	15, 16
Truth and Reconciliation Commission of Canada, <i>Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada</i> (Winnipeg: The Truth and Reconciliation Commission of Canada, 2015) online	5	11, 12, 14
United Nations Declaration on the Rights of Indigenous Peoples	1, 2, 4, 7, 10	1, 2, 7, 19, 29
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<i>Constitution Act</i> , 1982, s. 35	ii	
<i>Declaration on the Rights of Indigenous Peoples Act</i> [SBC 2019] ch. 44, s. 2(a)	7	19
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APPENDICES: ENACTMENTS

CONSTITUTION ACT, 1982

Recognition of existing aboriginal and treaty rights

35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of *aboriginal peoples of Canada*

(2) In this Act, *aboriginal peoples of Canada* includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) *treaty rights* includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Commitment to participation in constitutional conference

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the *Constitution Act, 1867*, to section 25 of this Act or to this Part,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

The Indian Act, 1927, s.141

141. Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of the said tribe or band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not

exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months. 1927, c. 32, s. 6.

Declaration on the Rights of Indigenous Peoples Act
[SBC 2019] CHAPTER 44

Purposes of Act

2 The purposes of this Act are as follows:

- (a) to affirm the application of the Declaration to the laws of British Columbia;